

MONTANA LEGISLATIVE HISTORY

Chapter 528 19 97

Bill HB 78 S _____ Original bill & history ✓c

H. Committee on Business & Labor

Hearing Date(s) _____ c

1/16 ✓c

2/19 ✓c

4/11 ✓c

Date Out

4/11 ✓c

S. Committee on Business & Industry

Hearing Date(s) _____ c

3/11 ✓c

_____ c

_____ c

out 3/19 ✓c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/20	2ND READING PASSED	83	14
1/21	3RD READING PASSED	85	14
	TRANSMITTED TO SENATE		
1/22	FIRST READING		
1/22	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/31	HEARING		
2/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/04	2ND READING CONCURRED	29	18
3/05	3RD READING CONCURRED	31	19
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	86	12
4/11	3RD READING CONCURRED AS AMENDED	74	22
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 320		
	EFFECTIVE DATE: 10/01/97		

REVISE AND CLARIFY THE LAWS GOVERNING LIQUOR LICENSES AND
LICENSE ADMINISTRATION

12/20	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO BUSINESS & LABOR		
1/16	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED	80	20
2/26	3RD READING PASSED	83	17
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & INDUSTRY		
3/11	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/26	2ND READING CONCURRED AS AMENDED	41	5
3/28	3RD READING CONCURRED	46	2
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS NOT CONCURRED	95	5
4/08	CONFERENCE COMMITTEE APPOINTED		
4/11	HEARING		
4/11	CONFERENCE COMMITTEE DISSOLVED		
4/11	FREE CONFERENCE COMMITTEE APPOINTED		
4/15	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/16	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	7
4/16	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	82	18
	SENATE		
4/09	CONFERENCE COMMITTEE APPOINTED		
4/11	CONFERENCE COMMITTEE DISSOLVED		
4/11	FREE CONFERENCE COMMITTEE APPOINTED		
4/15	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/16	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/17	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
4/21	SIGNED BY SPEAKER		

4/24 SIGNED BY PRESIDENT
 4/25 TRANSMITTED TO GOVERNOR
 5/05 SIGNED BY GOVERNOR
 CHAPTER NUMBER 528
 EFFECTIVE DATE: 07/01/97

HB 79 INTRODUCED BY SIMPKINS *LC0744 DRAFTER: MCCLURE*

PROVIDE THAT THE BOARD OF PUBLIC EDUCATION MAY NOT ADOPT RULES, POLICIES, OR STANDARDS RELATING TO ACCREDITATION STANDARDS AND CERTAIN OTHER MATTERS UNLESS THE LEGISLATURE SPECIFICALLY ACTS TO FUND THE RULES, POLICIES, OR STANDARDS

12/20	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/15	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	60	39
2/11	3RD READING PASSED	66	33
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/05	HEARING		
3/07	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

HB 80 INTRODUCED BY KITZENBERG *LC0071 DRAFTER: HEIMAN*

ESTABLISH A TAX CREDIT FOR BUSINESSES AND INDIVIDUALS HIRING RECENT MONTANA COLLEGE GRADUATES

12/23	INTRODUCED		
12/26	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO TAXATION		
1/08	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/14	HEARING		
1/14	TABLED IN COMMITTEE		
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 81 INTRODUCED BY DEVANEY *LC0176 DRAFTER: MITCHELL*

REVISE THE STATUTES REGARDING THE LEASING OF STATE LANDS FOR OIL AND GAS

BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

12/23	INTRODUCED		
12/26	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO NATURAL RESOURCES		
1/09	FISCAL NOTE RECEIVED		
1/10	HEARING		
1/10	FISCAL NOTE PRINTED		
1/14	COMMITTEE REPORT—BILL PASSED		
1/15	2ND READING PASSED	95	5
1/16	3RD READING PASSED	97	3

HOUSE BILL NO. 78
INTRODUCED BY SIMPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; RESTRICTING A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY TO THE TRANSFER OF A LICENSE TO AN AREA OUTSIDE OF THE QUOTA AREA IN WHICH THE LICENSE WAS ISSUED; REVISING LICENSE APPLICATION PROCEDURES AND THE PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING ADDITIONAL GROUNDS FOR DENYING A LICENSE; AMENDING SECTIONS 16-4-105, 16-4-203, 16-4-207, 16-4-402, 16-4-404, AND 16-4-405, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption.

(1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license, ~~which may not be used in conjunction with a retail all-beverages license;~~

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants, ~~which may not be used in conjunction with retail all-beverages licenses;~~

INTRODUCED BILL

1 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
2 corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail
3 beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail
4 beer license for every additional 2,000 inhabitants, ~~which may not be used in conjunction with retail~~
5 ~~all beverages licenses;~~

6 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
7 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
8 governs the number of retail beer licenses that may be issued for use within the cities and towns and within
9 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
10 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
11 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
12 from their respective corporate limits must be determined on the basis of the combined populations of both
13 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
14 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
15 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

16 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110
17 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in
18 violation of the limitations;

19 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
20 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal
21 military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a
22 lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in
23 existence for a period of 5 years or more prior to January 1, 1949;

24 (e) the number of retail beer licenses that the department may issue for use at premises situated
25 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
26 from the corporate limits or for use at premises situated within any unincorporated area must be determined
27 by the department in its discretion, ~~except that a retail beer license may not be issued for any premises so~~
28 ~~situated unless the department determines that the issuance of the license is required by public convenience~~
29 ~~and necessity.~~

30 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to

the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a ~~beer and wine~~ beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license."

Section 2. Section 16-4-203, MCA, is amended to read:

"16-4-203. Determination of public convenience and necessity. An original license issued pursuant to ~~16-4-104, 16-4-201, or 16-4-202 or 16-4-208~~ or the transfer ~~of location~~ of a license to a location outside of the quota area in which the license was issued may be approved only if the department has determined, ~~upon~~ after a public hearing held pursuant to the Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public convenience and necessity. If there is no opposition to the application for issuance or transfer of the license, a hearing is not required. An applicant is entitled to a hearing prior to the denial of a request for the issuance or transfer of a license."

Section 3. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application -- investigation -- publication -- protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail license, the department shall review the application for completeness and to determine whether the applicant, the existing premises, or the proposed premises to be licensed ~~meets~~ meet criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the information requested by the department. ~~The~~ When the application is complete, the department shall request that the department of justice investigate the application as provided in 16-4-402. ~~If after the investigation the department does not discover a basis to deny the application~~ Within 60 days after the department requests the investigation by the department of justice, the department shall ~~promptly~~ publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail license and that protests against the issuance of a license to the applicant by a person who has extended credit to the transferor or residents of the county from which the application

comes or adjoining Montana counties may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

Notice is given that on the day of, 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of counties may protest against the issuance of the license. Protests may be mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

Dated

Signed

ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing."

Section 4. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the department of justice make a thorough investigation of all matters relating to the application. Based on the results of the investigation, the department shall determine whether:

(i) the applicant is qualified to receive a license;
(ii) the applicant's premises are suitable for the carrying on of the business; and
(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) The department of justice investigation and the department's determination under this subsection (2) must be completed within 90 days of the request from the department to the department of justice. The time period in this subsection (2)(c) may be extended for up to 45 days if information requested within 75 days by either department has not been received by the 75th day. The basis for the extension of time must be documented.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

~~(4) If, within 30 days of receiving the completed application, the department finds no basis for denying the application, the department shall proceed to publish the notice of the application as required by 16-4-207.~~ Upon completion of the investigation and determination provided for in subsection (2), the department shall issue a conditional approval letter if the department has not received information that would cause the department to deny the issuance or transfer of the license. The conditional approval letter must state the reasons upon which the future denial of the issuance or transfer of the license may be based. The reasons for denial of the issuance or transfer of a license after the issuance of the conditional approval letter are:

(a) there is false or erroneous information in the application;
(b) the premises are not approved by local building, health, or fire officials; or
(c) physical changes to the premises if not known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or the issuance of the conditional approval letter."

Section 5. Section 16-4-404, MCA, is amended to read:

1 "16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer. (1) A license may
2 not be issued until on or after the date set in the notice for hearing protests. The department shall approve
3 or deny the issuance or transfer of a license or issue a conditional approval letter within 7 days after the
4 date set for notice and hearing and, if required, after notification from local building, health, and fire officials
5 has been received by the department.

6 (2) Every license issued under this code must state the name of the person to whom it is issued,
7 the location, by street and number or other appropriate specific description of location if no street address
8 exists, of the premises where the business is to be carried on under the license, and other information that
9 the department considers necessary. If the licensee is a partnership or if more than one person has an
10 interest in the business operated under the license, the names of all persons in the partnership or interested
11 in the business must appear on the license. Every license must be posted in a conspicuous place on the
12 premises in which the business authorized under the license is conducted, and the license must be exhibited
13 upon request to any authorized representative of the department or the department of justice or to any
14 peace officer of the state of Montana.

15 (3) A license issued under the provisions of this code is a privilege personal to the licensee named
16 in the license and is valid until the expiration of the license unless sooner revoked or suspended.

17 (4) A license may be transferred to the executor or administrator of the estate of a deceased
18 licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under
19 a license. The license may descend or be disposed of with the licensed business under appropriate probate
20 proceedings.

21 (5) (a) A licensee may apply to the department for a transfer of the license to different premises
22 within the quota area if:

- 23 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;
24 (ii) the lease of the licensed premises has expired;
25 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the
26 landlord; or
27 (iv) the licensee has proposed removal of the license to premises that are as substantially suited for
28 the retail alcoholic beverages business as the premises proposed to be vacated.

29 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases
30 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the

licensee applying for the transfer and is justified by public convenience and necessity. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license, and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in 16-4-204 and subsections (2) through (6) and ~~16-4-204 of this section~~, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the obligation to pay for the beer or wine."

Section 6. Section 16-4-405, MCA, is amended to read:

"16-4-405. Denial of license. (1) The department may deny the issuance of a retail alcoholic beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) A retail license may not be issued by the department for a premises situated within a zone of a city or town where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) A license under this code may not be issued if the department finds from the evidence at the hearing held pursuant to 16-4-207(3) that:

(a) the welfare of the people residing in the vicinity of the premises for which the license is desired will be adversely and seriously affected;

1 (b) if required, there is not a public convenience and necessity justification;

2 (c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability
3 criteria established by this code; ~~or~~

4 (d) a possible reason for denial listed in a conditional approval letter, as provided in 16-4-402, has
5 been verified; or

6 ~~(d)~~(e) the purposes of this code will not be carried out by the issuance of the license."
7

8 NEW SECTION. Section 7. Applicability. [This act] applies to applications for the issuance of
9 transfer of a license received on or after [the effective date of this act].

10
11 NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 1997.

12 -END-

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 16, 1997,
at 8:00 A.M., in Room 104

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 95; HB 78; HB 172; HB 115
Executive Action: HJR 3; HB 115 *HB 147*

HEARING ON

Opening Statement by Sponsor: REP. SAM KITZENBERG introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: 2.1; Comments: None.}

970116BU.HM1

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

{Tape: 1; Side: 1; Approx. Time Count: 14.1; Comments: None.}

Closing by Sponsor: REP. KITZENBERG closes on the bill.

{Tape: 1; Side: 2; Approx. Time Count: 1.7; Comments: None.}

HEARING ON HB 78

Opening Statement by Sponsor: REP. DICK SIMPKINS, H.D. 49 introduced the bill

{Tape: 1; Side: 2; Approx. Time Count: 3.3; Comments: None.}

Proponents' Testimony:

Phil Kiser, Triple Play.

{Tape: 1; Side: 2; Approx. Time Count: 12.7; Comments: None.}

Gary Blewett, Liquor Division, Department of Revenue.

{Tape: 1; Side: 2; Approx. Time Count: 17.1; Comments: None.}

Opponents' Testimony:

Mark Staples, Montana Tavern Association.

{Tape: 1; Side: 2; Approx. Time Count: 22.8; Comments: None.}

Informational Testimony:

Janet Jessup, Gambling Division, Department of Justice.

{Tape: 1; Side: 2; Approx. Time Count: 19.6; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: 2; Approx. Time Count: 34.4; Comments: None.}

Closing by Sponsor: REP. SIMPKINS closes on the bill.

{Tape: 2; Side: 1; Approx. Time Count: 7.5; Comments: None.}

HEARING ON HB 172

Opening Statement by Sponsor: REP. LOREN SOFT, H.D. 12 introduced the bill. EXHIBIT 2.

{Tape: 2; Side: 1; Approx. Time Count: 12.0; Comments: None.}

Proponents' Testimony:

Mark Cress, Personnel Division, Department of Administration.
EXHIBIT 3.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on February 19, 1997, at
8:00 AM, in Room 104

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: None

Executive Action: HB 78; HB 442; HB 519; HB 513;
HB 517; HB 539; HB 541; HB
543; HB 545; HB 252; HB 500;

EXECUTIVE ACTION ON HB 78

Motion: Rep. Devaney moved do pass HB 78

{Tape: 1; Side: 1; Approx. Time Count: .0; Comments: None.}

Motion/Vote: Rep. Devaney moved to adopt Simpkins amendments.
Carried 15-4. Masolo, Squires, Pavlovich and Ewer voted no.

{Tape: 1; Side: 1; Approx. Time Count: 2.2; Comments: None}

Motion: Rep. Devaney moved do pass HB 78 as amended.

{Tape: 1; Side: 1; Approx. Time Count: 6.0; Comments: None.}

Motion/Vote: Rep. Pavlovich substitute amendment to Table HB 78.
Motion passed roll call vote 16-1. Reps. Sliter and Gillan
absent. Rep. Simon voted no.

{Tape: 1; Side: 1; Approx. Time Count: 6.8; Comments: None.}

EXECUTIVE ACTION ON HB 442

Motion: Rep. Pavlovich moved do pass HB 442.

{Tape: 1; Side: 1; Approx. Time Count: 9.2; Comments: None.}

Motion/Vote: Rep. Pavlovich moved to adopt Menahan amendments.
Carried unanimously.

{Tape: 1; Side: 1; Approx. Time Count: 9.7; Comments: None.}

Motion/Vote: Rep. Pavlovich moved do pass HB 442 as amended.
Motion failed 6-12. Rep. Gillan absent.

{Tape: 1; Side: 1; Approx. Time Count: 11.0; Comments: None.}

Motion/Vote: Rep. Devaney moved to Table HB 442. Motion carried
13-5. Rep. Gillan absent.

{Tape: 1; Side: 1; Approx. Time Count: 14.9; Comments: None.}

EXECUTIVE ACTION ON HB 519

Motion: Rep. Tuss moved do pass HB 519.

{Tape: 1; Side: 1; Approx. Time Count: 16.5; Comments: None.}

Motion/Vote: Rep. Simon moved to adopt Simon amendments. Motion
carried unanimously.

{Tape: 1; Side: 1; Approx. Time Count: 16.6; Comments: None.}

Discussion:

{Tape: 1; Side: 1; Approx. Time Count: 17.6; Comments: None.}

Motion/Vote: Rep. Simon moved do pass HB 519 as amended. Motion
carried roll call vote 13-5. Rep. Sliter absent.

COMMITTEE--(S) BUSINESS & INDUSTRY

CHAIRMAN--JOHN HERTEL
SECRETARY-MARY GAY WELLS/442
NORMAL SCHEDULE => SITE: ROOM 410

DAYS: M,T,W,T,F TIME: 9:00 A.M.

BILL NO--		REFERRED	HEARING	OTHER CONSIDERATION	DATES	EXECUTIVE ACTION/DATE/VOTE	-----	REREFERRED	----	DATE READ
HB0016	PAVLOVICH, BOB				1/16 1/29	REQUIRE LICENSURE OF A PERSON SELLING SPORTS TAB GAMES CONCUR 01/29 VOTE: 6-0				1/30
HB0032	PECK, RAY				1/20 2/04	EXTEND BOND VALIDATING ACT CONCUR 02/04 VOTE: 6-0				2/05
HB0035	DEBRUYCKER, ROGER				1/13 1/30	ELIMINATE ARCHAIC CONSUMER LAWS PERTAINING TO PAINT LABELING & COAL INVOICES CONCUR 01/30 VOTE: 6-0				1/31
HB0056	JOHNSON, ROYAL				1/20 2/05	REVISE REVERSE ANNUITY MORTGAGE PROGRAM CONCUR 02/05 VOTE: 6-0				2/07
HB0058	EWER, DAVID				1/13 1/30	ELIMINATE ACCREDITATION OF POSTSECONDARY INSTITUTIONS CONCUR AS AMENDED 02/05 VOTE: 4-2				2/07
HB0078	SIMPKINS, DICK				3/04 3/11	REVISE LIQUOR LICENSE LAWS CONCUR AS AMENDED 03/19 VOTE: 5-1				3/21
HB0117	PAVLOVICH, BOB				1/20 2/05	CREDIT CARD DISABILITY INSURANCE CONCUR AS AMENDED 02/21 VOTE: 6-0				2/22
HB0131	SIMON, BRUCE				1/20 2/05	GENERALLY REVISE STATE INSURANCE LAWS; PROVIDE FOR UNIFORM CLAIM FORMS CONCUR AS AMENDED 02/20 VOTE: 6-0				2/21
HB0143	BARNETT, JOE				1/20 2/06	LIMIT AMOUNT INSURER CAN INVEST IN MORTGAGE LOANS CONCUR 02/06 VOTE: 6-0				2/08
HB0164	TUSS, CARLEY				1/29 3/04	GENERALLY REVISE OCCUPATIONAL LICENSING LAWS FOR CERTAIN OCCUPATIONS CONCUR AS AMENDED 03/18 VOTE: 6-0				3/19
HB0165	TUSS, CARLEY				1/20 2/06	UPDATE CONTROLLED SUBSTANCES SCHEDULES CONCUR 02/06 VOTE: 6-0				2/08

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 11, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: Sen. Debbie Bowman Shea (D)

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 78; HB 267; 3/5/97
Executive Action: None

{Tape: 1; Side: A; Approx. Time Count: 9:03 AM; Comments: N/A.}

HEARING ON HB 78

Sponsor: REP. RICHARD D. SIMPKINS, HD 49, GREAT FALLS

Proponents: Gary Blewett, Department of Revenue
Kati Kintli, MT Tavern Assoc.
REP. BOB PAVLOVICH, HD 37, BUTTE
John Hayes, Cascade County Tavern Assoc.

Opponents: None

Opening Statement by Sponsor:

REP. RICHARD D. SIMPKINS, HD 49, GREAT FALLS. This morning I
would like to introduce HB 78. A couple of people in Great Falls
had all sorts of problems on a liquor license transfer. Terms

came out that had not been used in years. I found these laws were unbelievable. There was no time element. So this problem has been going on for almost three years. There were many discrepancies. There was different terminology for a hearing, different meaning to an inspection, who does what inspection, etc. I wrote up the bill. At first, it stimulated some interest and then after presenting it to the House committee, those concerned came together and put a bill together that has been agreed upon by the Department of Revenue, the Department of Justice and the MT Tavern Association and the two people involved in Great Falls. The bill you have before you is almost like a substitute bill as my original bill was almost totally rewritten.

(The sponsor at this time explained the bill, section by section. The first proponent, **Mr. Gary Blewett, Department of Revenue**, handed in a written explanation of the bill and detailed it himself which was very similar to the sponsor's opening statement.)

There is an amendment that is going to be submitted. I am disappointed in what is happening. I have given it serious consideration. The amendment is to change the number of complaints from 100% to 10% of the quota for liquor licenses in a quota area. It states in section 4, subsection 4 (c): "The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be equal to the quota for all-beverages licenses determined for the quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption of beer or all beverage licenses." For example, in Great Falls the quota is 41 licenses. It would be necessary for 41 letters of complaint or protest be sent to the Department of Revenue. They want to amend it to only 4 protests or 10% of the quota. I would agree to 50% or 20 protest letters in Great Falls.

{Tape: 1; Side: A; Approx. Time Count: 9:19 AM; Comments: N/A.}

Proponents' Testimony:

Gary Blewett, Administrator, Liquor Division, Department of Revenue. I stand before you in support of this bill. I have copies of my testimony (EXHIBIT 1) and would like to read the nine points that have been laid out. The bill provides important clarification of alcohol licensing processes that have caused problems in the past. We appreciate the sponsor's willingness to modify the original bill to incorporate DOR issues. A team did evolve to produce this bill: the sponsor, the licensee, the tavern association, the Dept. of Revenue and the Dept of Justice. Thank you for your time and attention.

Kati Kintli, Attorney, MT Tavern Association. We come before you today in support of HB 78. As REP. SIMPKINS had mentioned, the MT Tavern Assoc. was involved in working out some of the elements of this bill. At the outset, we were concerned about the deletion of "public convenience and necessity". We believe that is an important element in our liquor licensing laws. We appreciate the sponsor's allowing us the opportunity to work with him and the Dept. in refining this bill. We feel this bill better defines "public convenience and necessity". It gives the applicant the opportunity to understand what "public convenience and necessity" is and what they need to do to meet that standard. As a private attorney in Helena, I represent applicants and protestants alike. I know that when a person applies for a liquor license, and if a person protests a liquor license, it is somewhat confusing as to what that "public convenience and necessity" standard is. These guidelines are very helpful. Some of the procedural changes that were entered into the bill are very helpful in aiding the very rigorous application process for a liquor license. I understand there has been an amendment to the bill suggested by the Cascade County Tavern Assoc. I am a bit in the middle here being from the MT Tavern Assoc. We understand the Cascade County Tavern Assoc.'s concerns and we would support any amendment that would be agreed upon by both parties. HB 78 is a good bill and urge your support of HB 78. Thank you.

REP. BOB PAVLOVICH, HD 37, BUTTE. I am rather an in-between testifier. When we heard this bill in the House Business & Labor Committee, my suggestion that we table the bill in the committee was almost unanimous. In the meantime, the sponsor and others have worked together to resurrect the bill. In talking with the MTA, they agreed with the bill, so I agreed with the bill. I have one amendment (EXHIBIT 2) requested by SEN. DEBBIE SHEA and this is on page 8, line 3 concerning protests. We would like to see that number changed to 10% of the quota. For example, in Silver Bow county, we have 47 quota licenses. I would have to have 47 letters of protest. I could get that from anyone just like a petition. But if I am going to protest something, I would like to go to my association and my community and get four or five tavern owners that would protest this with me and we would go to the hearing and present our case. We will leave it up to the committee. Thank you.

John Hayes, Great Falls, Cascade County Tavern Assoc. We thank the sponsor for this bill and the two Departments. We apologize to the sponsor for any misunderstanding that we have created in this bill. We feel that the amendment is necessary. We could get 41 signatures but we would rather do it with valid signatures and valid protestors.

{Tape: 1; Side: A; Approx. Time Count: 9:31 AM; Comments: N/A.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked if on page 7, the protest petition cannot be considered as one protest, but as letters of protest, would a form letter be considered the same as an original letter. What has been gained? REP. SIMPKINS replied that clarity has been gained. We prevented the petitions and the petitions have been driving everyone crazy and they couldn't be verified. The protest has to come from within the quota area. We have gained that. Even with a form letter, it could be verified that this person has a legitimate right to protest. SEN. MCCARTHY asked that if she signs the protest form letter, must she then go to Helena and protest there? Mr. Blewett responded that if you have something to offer in testimony relative to the protest, yes you would need to come to the county of the quota area for a "public convenience and necessity" hearing. The count of protests come by virtue of the letters themselves, not the appearance before the hearing. SEN. MCCARTHY asked if the Dept. notifies all protestors of the hearing? Mr. Blewett said that first there is a notice in the newspaper saying that protests can be made. But then, once protests are received, and to the extent that we can, every individual is notified that a hearing is going to be held. Notices are sent to the names and that is why they need to send us both their mailing address and street address so that we know they are in the quota area. SEN. MCCARTHY asked if it would be possible that a local zoning board hearing and a public hearing of protest both would be scheduled? Mr. Blewett said that yes it could be.

SEN. CASEY EMERSON asked if it were more important for 41 letters of protest and only four people show up for the hearing or more important if there would be four letters and four people show for the hearing? Mr. Blewett answered that it is the preponderance of evidence that is used; it is not the count or number of bodies or letters in making a determination whether or not the license should be issued.

SEN. EMERSON wondered about No. 5 from Mr. Blewett's Exhibit 1 that said information received independently of the DOJ investigation could be used to deny an application without being verified by the DOJ investigators. Is that a concern to the sponsor? REP. SIMPKINS said there is just one investigation team through joint cooperation. The Dept. of Justice conducts the investigation but really works for the Dept of Revenue. The DOJ is also dealing with the gambling issues and the DOR is dealing with the liquor licenses. As soon as they get an application, they send out inquiries all over. Meanwhile, the DOJ goes along and if the DOR gets condemning information back, that allows them the ability to deny the application without having the DOJ investigate. Each one has to be able to say "no".

SEN. JOHN HERTEL asked about the amendment being proposed. Would the sponsor specify his concern about the 10% versus the 50%?

REP. SIMPKINS said that he was concerned about how easy it would

be for other owners to stop an action. If they are really upset and want to stop an action, they should have to jump through some hoops--not be given a checkered flag and say go. If they have to have 41 protestors, they have to do a bit of work. Four is a very small number and for small quota areas only one would be required.

SEN. MCCARTHY reminded the committee that Mr. Blewett said it was not the number but the preponderance of evidence. So if one person came in and had a substantial reason for not wanting it and it was a good reason, that would be just as valid as if someone came in with 50 protestors. REP. SIMPKINS said that if you drop it down to that, one bar owner could object. But when you get into the "public convenience and necessity" issue, it is a much further expanded issue. I guess, if you want less, at least make it a percentage of the quota area number.

REP. SIMPKINS explained the difference between the two possible hearings. Two protests can launch a hearing on whether or not the sale or transfer should take place. But the other hearing on "public convenience and necessity", the Dept. of Revenue will determine whether or not to put the liquor license in a particular neighborhood and whether or not it meets the public's need and convenience. Do you see the difference in the hearing? One is much more complex and therefore you have the Dept. telling the city, even though the police chief had no problem and the city manager had no problem, you can't put it there. This is what we are trying to conclude.

{Tape: 1; Side: A; Approx. Time Count: 9:46 AM; Comments: N/A.}

Closing by Sponsor:

REP. SIMPKINS closed. I would like the charts to be handed out (EXHIBIT 3). It will help you to see the quotas for the licenses in the counties. It shows the 1994 census and the quotas are based upon population. Looking at Big Horn Co., the quota of 11 does not count the 4 in Hardin. The county figure represents the county less the incorporated cities. The incorporated cities have their quota within their own boundaries. Cascade Co. has 28 quotas and Great Falls has 41. The larger cities are pretty well maxed out. I appreciate all who have come out to testify. I thank the Depts. for their help and the MT Tavern Assoc. I hope that the committee will keep the percentage of protestors around 50%.

{Tape: 1; Side: B; Approx. Time Count: 9:50 AM; Comments: THE TAPE WAS TURNED AT THE END OF THE FIRST BILL.}

HEARING ON HB 267

Sponsor: REP. GAY ANN MASOLO, HD 40, TOWNSEND

Testimony on HB0078, Sponsor: Representative Simpkins
Proponent: Gary Blewett, Liquor Division Administrator, Department of Revenue
Hearing before the Senate Business & Industry Committee on March 11, 1997

The DOR supports this bill because it provides important clarification of alcohol licensing processes that have caused problems in the past. We have appreciated the sponsor's willingness to modify his original bill to incorporate DOR issues. A team evolved to produce this bill as it is: the sponsor, a licensee, the tavern association, the DOR which evaluates and issues licenses and the DOJ which conducts the investigations of applicants in support of the DOR licensing process.

There are nine areas of change that this bill involves:

1. When an application is received for a transfer of ownership or location or for a new license, the DOR will have one opportunity to ask for missing information and the applicant will have 60 days to fully respond. Currently, the process can drag on with repeated requests for yet more information to complete the application.
2. When the application is complete, the DOR asks the DOJ to conduct an investigation of the application. Within 30 days of that request the DOR publishes notice of the application, giving opportunity for people in the application area and people who have extended credit to the license transferor to protest the application. This is not a change from current practice, but the bill clears up the confusion that some applicants had that the investigation had to be completed within 30 days.
3. The requirements for indicating a protest are more specific. The bill requires a letter from each protestor giving legibly the full name, mailing address and street address which must be signed by the protestor. No protest petitions would be allowed. Currently, the DOR gets protests in a variety of formats that often makes it difficult to determine who is protesting.
4. The bill does specify the time requirement for completion of the investigation where the law is currently silent. The investigation and decision process would be limited

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 3-11-97

BILL NO. HB 78

Amendments to House Bill No. 78
Third Reading Copy

Requested by Senator Shea
For the Committee on Business and Labor

Prepared by GerryAnn Dover
March 7, 1997

1. Page 8, line 3.
Following: "must be"
Strike: "equal to"
Insert: "10% of"

Quota for Liquor Licenses

QUOTA AREA	1,994 CENSUS	QUOTA LIQUOR	LICENSES ISSUED
BEAVERHEAD CO	4,336	5	13
DILLON	4,253	5	14
LIMA	260	2	2
BIG HORN CO	8,571	11	2
HARDIN	2,985	4	9
LODGE GRASS	504	2	0
BLAINE CO	4,618	6	4
CHINOOK	1,551	3	6
HARLEM	885	2	2
BROADWATER CO	1,745	2	5
TOWNSEND	1,932	3	6
CARBON CO	4,811	6	8
BRIDGER	764	2	3
FROMBERG	414	2	3
JOLIET	637	2	2
RED LODGE/BEAR CREEK	2,321	4	15
CARTER CO	1,074	1	2
EKALAKA	457	2	3
CASCADE CO	21,475	28	25
GREAT FALLS	58,202	41	75
BELT	571	2	4
CASCADE	871	2	3
NEIHART	48	2	1
CHOUTEAU CO	2,746	3	4
FORT BENTON	1,674	3	6
GERALDINE	308	2	2
BIG SANDY	723	2	3
CUSTER CO	3,361	4	0
MILES CITY	8,745	8	19
ISMAY	20	2	0
DANIELS CO	938	1	3
FLAXVILLE	83	2	2
SCOBEY	1,131	3	6
DAWSON CO	4,110	5	1
RICHEY	202	2	1
GLENDIVE	4,682	6	10
DEER LDG/ANACONDA	10,229	13	38
FALLON CO	1,105	1	0
BAKER	1,830	3	7
PLEVNA	126	2	1
THREE FORKS	1,357	3	4
FERGUS CO	5,399	7	6
GRASSRANGE	153	2	1
DENTON	334	2	1
LEWISTOWN	6,368	7	11

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3DATE 3-11-97BILL NO. H B 78

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By CHAIRMAN JOHN HERTEL, on March 19, 1997, at
9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 375; HB 533; 3/5/97
Executive Action: HB 375; HB 533; HB 431;
HB 435; HB 406; HB 78;
HB 399; HB 478; HB 492
HB 287 TABLED

HEARING ON HB 375

Sponsor: REP. WILLIAM RYAN, HD 44, GREAT FALLS

Proponents: Carl Schweitzer, MT Contractors Assoc.
Don Chance, MT Building Industry Assoc.
Kurt Baltrusch, Montana-Dakota Utilities, Billings
Gary Wiens, MT Electric Cooperatives Association
Bud Criner, One Call Service Center

Opponents: None

EXECUTIVE ACTION ON HB 406

Motion: SEN. BEA MCCARTHY MOVED HB 406 BE CONCURRED IN.

Amendments: SEN. BENEDICT MOVED TO AMEND HB 406 (EXHIBIT 3)
hb040601.abc.

Discussion: Bart Campbell explained the amendments. The 15 days are being left in for mobile home courts for payment of rent. SEN. BENEDICT felt this was a good bill and especially with the current law being left regarding the 15 days. The grace period is left up to the landlord. He can use zero to whatever days as a grace period.

Vote: THE MOTION TO AMEND HB 406 CARRIED WITH SENATORS CRISMORE AND EMERSON voting NO: 4-2

Motion/Vote: SEN. BENEDICT MOVED HB 406 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY: 6-0 SEN. DEPRATU WILL CARRY.

EXECUTIVE ACTION ON HB 78

Motion: SEN. BEA MCCARTHY MOVED HB 78 BE CONCURRED IN.

Amendments: SEN. WILLIAM CRISMORE MOVED TO AMEND HB 78 (EXHIBIT 4) hb007801.abc.

Discussion: Bart Campbell explained the amendment. The quota of protestors to license holders would be 50%. SEN. HERTEL AND SEN. BENEDICT felt that 50% was a more reasonable number.

Motion/Vote: SEN. CRISMORE MOVED HB 78 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH SENATOR SHEA voting NO: 5-1

EXECUTIVE ACTION ON HB 399

Motion: SEN. STEVE BENEDICT MOVED HB 399 BE CONCURRED IN.

Amendments: SEN. MCCARTHY MOVED TO AMEND HB 399 (EXHIBIT 5)
hb039901.abc.

Discussion: SEN. BENEDICT explained the amendment as he had proposed it to the sponsor. It changes the type of members on the board to two members of the profession and two members of the public. They felt that was a good balance.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

Amendments to House Bill No. 78
Third Reading Copy

DATE 3-19-97

BILL NO. HB 78

For the Committee on Business and Industry

Prepared by Bart Campbell
March 17, 1997

1. Page 8, line 3.
Strike: "equal to"
Insert: "50%"

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 078

Call to Order: By CHAIRMAN JOHN HERTEL, on April 11, 1997, at
11:00 A.M., in Room 317.

ROLL CALL

Members Present:

Rep. Richard D. Simpkins (R)
Rep. Joe Tropila (D)
Rep. Jack Wells (R)
Sen. John R. Hertel (R)
Sen. Lorents Grosfield (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Elaine Benedict, Committee Secretary

TAPE RECORDED ON 2.4 SPEED SETTING

HEARING ON HB 78

Sponsor: REP. RICHARD SIMPKINS, House District 49, Great Falls.

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Count: 1.5; Comments: None.}

EXHIBIT 1. REP. SIMPKINS

Informational Testimony:

Gary Blewett, Administrator of Liquor Division, Department of
Revenue.

EXHIBITS 2 & 3

{Tape: 1; Side: A; Approx. Time Count: 2.4; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 12.8; Comments: None.}

Informational Testimony:

Kati Kintli, Montana Tavern Association.

{Tape: 1; Side: A; Approx. Time Count: 27.9; Comments: None.}

Bart Campbell, Legislative Services Division.

{Tape: 1; Side: A; Approx. Time Count: 29.2; Comments: None.}

Ms. Kintli

{Tape: 1; Side: A; Approx. Time Count: 30.0; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 30.9; Comments: None.}

Informational Testimony:

Ellen Engstedt, Don't Gamble With The Future.

{Tape: 1; Side: A; Approx. Time Count: 34.6; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 37.2; Comments: None.}

EXECUTIVE ACTION ON HB 78

EXHIBIT 4. Mr. Campbell.

Amendments: hb007802

Motion/Vote: REP. RICHARD SIMPKINS MOVED AMENDMENT HB007802 DO PASS. Motion passed unanimously.

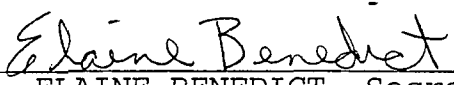
{Tape: 1; Side: A; Approx. Time Count: 57.2; Comments: None.}

ADJOURNMENT

Adjournment: 11:55



SEN. JOHN HERTEL, Chairman



ELAINE BENEDICT, Secretary

JH/EMB



EXHIBIT 1
DATE 4-11-97
HB HB 78

SENATE COMMITTEE OF THE WHOLE AMENDMENT

House Bill 78
Senator Lorents Grosfield

March 26, 1997 12:33 pm

Mr. Chairman: I move to amend House Bill 78 (second house second reading copy -- tan).

ADOPT

REJECT

Signed: Lorents Grosfield

Senator Lorents Grosfield

That such amendments read:

1. Page 5, line 5.
Following: "located"
Insert: "; (v) the approval of the application will not have an adverse impact on the area to be served;
(vi) the approval of the application will not have a negative impact on existing licensees"
2. Page 5, lines 22 through 25.
Following: "consumption" on line 22
Strike: remainder of line 22 through "gaming" on line 25
3. Page 5, lines 28 and 29.
Following: "hearing" on line 28
Strike: "or"
Insert: "or"
Following: "considered" on line 28
Strike: remainder of line 28 through "hearing" on line 29

-END-

HB 78

SENATE

661231CW.STS

15 Amd. Coord.

HB78
AMENDMENTS
CONFERENCE COMMITTEE

1. Page 5, lines 6 and 7
Strike: line 6 and line 7 in their entirety.

Reason: The language is vague and does not give an applicant direction when a public convenience and necessity determination is required about what evidence the applicant should present in order to show that the area will not be adversely impacted. In contrast, subsection (2) (b) (iv) provides an explicit standard for an applicant to show whether or not there would be adverse impact on the area to be served. Furthermore, Section 7 (16-4-405) already provides an avenue for denial of a license on grounds similar to this language that is separate from a public convenience and necessity determination: "the welfare of the people residing in the vicinity of the premises for which the license is desired will be adversely and seriously affected". Finally, the language should be stricken because its inclusion suggests a standard in addition to all other standards already included in the bill and will cause confusion as to what additional meaning the legislature intended.

2. Page 5, lines 8 and 9
Strike: line 8 and line 9 in their entirety.

Reason: The language is vague and forces an applicant to demonstrate that there would not be a negative impact on every existing licensee. Conceivably this could mean every licensee in the state of Montana. Subsections (2) (b) (ii) and (iii) provide the means to address the same issue, but from the perspective of the existing licensees' customers rather than the licensees directly. Subsection (2) (b) (ii) focuses on the demand for the services of these licenses and (2) (b) (iii) focuses on the public's ability to use the all of the licensed services throughout the area. The language should be stricken because its inclusion suggests a standard in addition to all other standards already included in the bill and will cause confusion as to what additional meaning the legislature intended. One possible additional meaning might be negative economic impact on one or more existing licensees, suggesting that further competition by the addition of a license despite availability under the quota system is to be discouraged.

LIQUOR -- LICENSES AND PERMITS

42.12.102 Sub-Chapter 1

License Applications

42.12.101 APPLICATION FOR LICENSE (1) All applications for licenses to sell alcoholic beverages at retail or wholesale must be made to the liquor division of the department upon forms supplied by the liquor division.

(2) Applications for licenses shall be in the names of all persons financially interested or to be financially interested in the business to be conducted. The names of all such persons shall appear on the licenses. The disqualification of any one or more applicants to hold the license disqualifies all. (History: Sec. 16-1-303 MCA; IMP, Sec. 16-4-201 MCA; NEW, EFF. 11/3/75; AMD, 1985 MAR P. 167, EFF. 2/15/85; AMD, 1992 MAR P. 1244, EFF. 6/12/92.)

42.12.102 SUPPORTING DOCUMENTATION -- PUBLIC CONVENIENCE AND NECESSITY (1) Applications for retail alcoholic beverages licenses must be supported by evidence of public convenience and necessity. Supporting evidence is required when applying for: (a) any new retail license including a 16-4-204, MCA, all-beverages license; or (b) a transfer of location of an existing licensed premises.

(2) Evidence may include: (a) written statements outlining the applicant's plans for the facility; the type of service to be offered; the clientele to be served; characteristics of the general area in which the premises will be located; area growth patterns and potential; traffic patterns; types of current and possible businesses the area supports; and other information the applicant deems appropriate to support the application; (b) exhibits, drawings, or plats; and (c) petitions from interested parties or potential customers supporting the application. (3) The department will find that the evidence supports the public convenience and necessity of the application where it indicates that the issuance of the license will materially promote the public's ability to engage in the licensed activity. This determination involves an evaluation of a variety of criteria, including all together the business ability and character of the applicant, the demand for services in the area to be served, the impact on existing retail alcoholic beverages licenses, and any adverse impact on the area to be served. No single factor is a necessary or sufficient indicator of public convenience and necessity. (History: Sec. 16-1-303 MCA; IMP, Secs. 16-4-105 and 16-4-203 MCA; NEW, EFF. 11/3/75; AMD, 1985 MAR P. 167, EFF. 2/15/85; AMD, 1993 MAR P. 158, EFF. 1/29/93.)

ADMINISTRATIVE RULES OF MONTANA

3/31/93

42-1205

LIQUOR -- LICENSES AND PERMITS

42.12.121 PROCESSING OF APPLICATION (1) Upon receipt of

an application for a license to sell alcoholic beverages, the department shall make a thorough investigation as to the qualifications of the applicant and the suitability of the premises proposed for licensing. If, upon such investigation, it appears that the applicant is qualified under the law and the rules of the department, the department shall issue the license if all other requirements of the law and these rules are fulfilled. (2) The department will consider the same matters and conditions on application for renewal of license as for the original application. (History: Sec. 16-1-303 MCA; IMP, Title 16, Chapter 4, MCA; NEW, EFF. 11/3/75; AMD, 1985 MAR P. 167, EFF. 2/15/85.)

42.12.122 DETERMINATION OF SUITABILITY OF PREMISES (1) A party applying for either a new retail license, the transfer of ownership of an existing retail license, the transfer of location of an existing retail license or approval of an alteration to a premises must provide the department with evidence of the suitability of the premises for the use intended. (2) The premises must be considered suitable for the retail sale of alcoholic beverages if: (a) It meets the standards of the department of health and environmental sciences; the department of commerce, building codes bureau; and the state fire marshal's office in the fire prevention and investigation bureau of the department of justice; or their delegated representatives. (1) A license issued for off-premises consumption of beer and/or table wine must meet the standards for an establishment operated as a grocery store or a drug store licensed as a pharmacy; (11) A license issued for on-premises consumption of beer must meet the standards for an establishment operated as a bar or tavern; (111) A license issued for on-premises consumption of beer and wine must meet the standards for an establishment operated as either a restaurant or a prepared food business; and (1111) A license issued for on-premises consumption of all-alcoholic beverages must meet the requirements for a bar or tavern. (b) The investigator can easily ascertain the type of alcoholic beverages business that is being conducted on the premises due to indoor and outdoor advertising, signage and/or the general layout and atmosphere of the premises to be licensed. The two circumstances to be ascertained are:

ADMINISTRATIVE RULES OF MONTANA

12/31/93

42-1221

EXHIBIT 4
DATE 4-11-97
HB 78

Amendments to House Bill No. 78
Reference Reading Copy

For the Free Conference Committee
For the Committee on

Prepared by Bart Campbell
April 11, 1997

1. Page 5, line 5.

Strike: "i"

Insert: "."

2. Page 5, lines 6 through 9.

Strike: subsections (V) and (VI) in their entirety

3. Page 11, line 23.

Following: "residing"

Insert: "or of retail licensees located"



FREE CONFERENCE COMMITTEE

on House Bill 78
Report No. 1, April 14, 1997

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 78** (reference copy -- salmon) and recommend that **House Bill 78** be amended as follows:

1. Page 5, line 5.

Strike: "i;"

Insert: "."

2. Page 5, lines 6 through 9.

Strike: subsections (V) and (VI) in their entirety

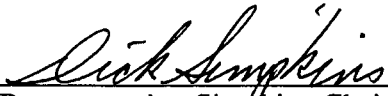
3. Page 11, line 23.

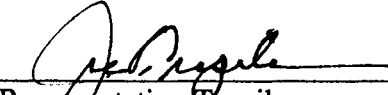
Following: "residing"

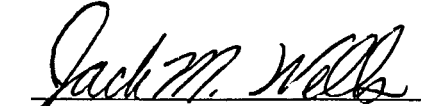
Insert: "or of retail licensees located"

And this FREE Conference Committee report be adopted.

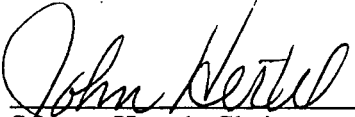
For the House:


Representative Simpkins, Chair


Representative Propila


Representative Wells

For the Senate:


Senator Hertel, Chair


Senator Grosfield


Senator Wilson

ADOPT

REJECT

AC HB 78-1

791235CC.Hgd

HOUSE BILL NO. 78
INTRODUCED BY SIMPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; ~~RESTRICTING~~ REVISING THE CONDITIONS UNDER WHICH A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY TO THE TRANSFER OF A LICENSE ~~TO AN AREA OUTSIDE OF THE QUOTA AREA IN WHICH THE LICENSE WAS ISSUED IS REQUIRED~~; REVISING LICENSE APPLICATION PROCEDURES AND THE PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING ADDITIONAL GROUNDS FOR DENYING A LICENSE; REVISING SPECIAL PERMIT FEES; AMENDING SECTIONS 16-4-105, 16-4-115, 16-4-203, 16-4-207, 16-4-402, 16-4-404, ~~AND 16-4-405, AND 16-4-501~~, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses -- wine license amendments -- ~~off-premises consumption~~.

(1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license, ~~which may not be used in conjunction with a retail all-beverages license;~~

1 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000
2 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer
3 license for every 500 inhabitants, ~~which may not be used in conjunction with retail all beverages licenses;~~

4 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
5 corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail
6 beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail
7 beer license for every additional 2,000 inhabitants, ~~which may not be used in conjunction with retail~~
8 ~~all beverages licenses;~~

9 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
10 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
11 governs the number of retail beer licenses that may be issued for use within the cities and towns and within
12 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
13 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
14 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
15 from their respective corporate limits must be determined on the basis of the combined populations of both
16 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
17 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
18 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

19 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110
20 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in
21 violation of the limitations;

22 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
23 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal
24 military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a
25 lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in
26 existence for a period of 5 years or more prior to January 1, 1949;

27 (e) the number of retail beer licenses that the department may issue for use at premises situated
28 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
29 from the corporate limits or for use at premises situated within any unincorporated area must be determined
30 by the department in its discretion, except that a retail beer license may not be issued for any premises so

1 situated unless the department determines that the issuance of the license is required by public convenience
2 and necessity pursuant to 16-4-203.

3 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
4 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
5 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
6 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
7 A person holding a ~~beer and wine~~ beer and wine license may sell wine for consumption on or off the
8 premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine
9 amendment license."

10
11 **Section 2.** Section 16-4-115, MCA, is amended to read:

12 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
13 or table wine, or both, in the original packages for off-premises consumption may be issued only to a
14 person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or
15 corporation qualified to sell beer or table wine, or both, and whose premises proposed for licensing are
16 operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that
17 the department may issue is not limited by the provisions of 16-4-105 but must be determined by the
18 department in the exercise of its sound discretion, and the department may in the exercise of its sound
19 discretion grant or deny an application for any ~~such~~ license or suspend or revoke any license for cause.

20 (2) Upon receipt of a completed application for a license under this section, accompanied by the
21 necessary license fee as provided in 16-4-501, the department shall request that the department of justice
22 make a thorough investigation of all matters relating to the application.

23 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
24 subsection (1), the department shall determine whether:

- 25 (a) the applicant is qualified to receive a license;
26 (b) the applicant's premises are suitable for the carrying on of the business; and
27 (c) the requirements of this code and the rules promulgated by the department are met and
28 complied with.

29 ~~(3)(4)~~ License applications submitted under this section are not subject to the provisions of
30 16-4-203 and 16-4-207.

1 ~~(4)~~(5) If the premises proposed for licensing under this section are a new or remodeled structure,
2 the department may issue a conditional license prior to completion of the premises upon reasonable
3 evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or
4 a drugstore licensed as a pharmacy."

5
6 **Section 3.** Section 16-4-203, MCA, is amended to read:

7 **"16-4-203. Determination of public convenience and necessity.** (1) An original license issued
8 pursuant to 16-4-104, 16-4-201, or 16-4-202, or 16-4-208 or the transfer of location of a an on-premises
9 retail license may be approved only if the department has determined, upon a hearing held pursuant to the
10 Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public
11 convenience and necessity. If there is no opposition to the application for issuance or transfer of the
12 license, a hearing is not required if the department does not receive the minimum number of protests
13 required for a public convenience and necessity determination pursuant to 16-4-207, in which case the
14 application must be regarded as a prima facie showing of public convenience and necessity and no further
15 determination of public convenience and necessity is allowed.

16 (2) (a) If the department receives at least the minimum number of protests required for a public
17 convenience and necessity determination, as provided in 16-4-207, an application must be approved when
18 evidence indicates that the issuance of an original license or transfer of location will materially promote the
19 public's ability to engage in the licensed activity.

20 (b) The issuance of an original license or a transfer of location will materially promote the public's
21 ability to engage in the licensed activity if:

22 (i) the applicant's history and experience demonstrate the capacity to operate the proposed license
23 in a lawful manner;

24 (ii) the approval of the application for the premises at the proposed location is consistent with the
25 public's demand or probable demand for the licensed activity that presently exists or is reasonably expected
26 to exist within the next 5 years in the quota area where the proposed premises is located and in quota
27 areas adjacent to the quota area where the proposed premises is located;

28 (iii) the approval of the application for the premises at the proposed location contributes to the
29 public's ability to participate in the licensed activity throughout the quota area where the proposed premises
30 is located and quota areas adjacent to the quota area where the proposed premises is located;

1 (iv) the approval of the application for the premises at the proposed location is consistent with
2 adopted or pending planning, annexation, and zoning ordinances of local governments that confer or will
3 confer jurisdiction over business and developments such as the proposed license in the quota area where
4 the proposed premises is located and in quota areas adjacent to the quota area where the proposed
5 premises is located.

6 ~~(V) THE APPROVAL OF THE APPLICATION WILL NOT HAVE AN ADVERSE IMPACT ON THE AREA~~
7 ~~TO BE SERVED;~~

8 ~~(VI) THE APPROVAL OF THE APPLICATION WILL NOT HAVE A NEGATIVE IMPACT ON EXISTING~~
9 ~~LICENSEES.~~

10 (3) When determining whether or not an application is justified by public convenience and necessity,
11 the department may:

12 (a) receive evidence at the public hearing specified in 16-4-207 only from the applicant, any
13 protestors whose protests the department has accepted pursuant to 16-4-207, and any other person
14 summoned or called by either a protestor or applicant;

15 (b) find that the application is justified by public convenience and necessity if the applicant has
16 provided substantial credible evidence as provided for in this subsection (3) that shows that the
17 department's approval of the application will materially promote the public's ability to engage in the licensed
18 activity. The substantial credible evidence required must include a consideration of each of the components
19 of materially promoting the public's ability to engage in the licensed activity as provided in subsection
20 (2)(b).

21 (4) For the purposes of this section, the following definitions apply:

22 (a) "Confer or will confer jurisdiction" means the power or authority that a local government or an
23 appointed subsidiary of a local government has or may obtain within 1 year from the date of the hearing
24 to consider and adopt planning, annexation, or zoning ordinances.

25 (b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in
26 a business licensed to sell alcoholic beverages at retail for on-premises consumption and does not include
27 any other activity that may be carried on or is supplemental to the sale of alcoholic beverages at retail for
28 on-premises consumption such as the sale of prepared food for on-premises consumption or licensed
29 gaming.

30 (c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local

1 government or an appointed subsidiary of a local government that were publicly considered within the year
2 preceding the date of the hearing, OR are presently being considered, or may reasonably be expected to
3 be considered or adopted within 1 year after the date of the hearing."

4
5 **Section 4.** Section 16-4-207, MCA, is amended to read:

6 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application
7 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the
8 location of a retail license, the department shall review the application for completeness and ~~to~~ based upon
9 review of the application and any other information supplied to the department, determine whether the
10 applicant or the premises to be licensed meets criteria provided by law. The department may make one
11 request for additional information necessary to complete the application. The application is considered
12 complete when the applicant furnishes the application information requested by the department. If the
13 applicant does not provide the additional application information within 60 days of the department's
14 request, the department shall terminate the application and return it to the applicant with an explanation
15 of why the application was terminated. The terminated application is not a denial, and the premises
16 identified in the application is not subject to the provisions of 16-4-413. An applicant whose application
17 is terminated may subsequently submit a new application. The When the application is complete, the
18 department shall request that the department of justice investigate the application as provided in 16-4-402.
19 If ~~after the investigation~~ the department does not discover a basis to deny the application within 30 days
20 after the department requests the investigation by the department of justice, the department shall promptly
21 publish in a newspaper of general circulation in the city, town, or county from which the application comes
22 a notice that the applicant has made application for a retail ~~license~~ on-premises license or a transfer of
23 location and that protests may be made against the ~~issuance of a license~~ approval of the application to the
24 ~~applicant~~ by a person who has extended credit to the transferor or by residents of the county from which
25 the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in
26 the department of revenue within 10 days after the final notice is published. Notice of application for a new
27 license must be published once a week for 4 consecutive weeks. Notice of application for transfer of
28 ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may
29 be substantially in the following form:

30 **NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE**

1 Notice is given that on the day of, 19.., one (name of applicant) filed an application for a
2 retail all-beverages license with the Montana department of revenue, to be used at (describe location of
3 premises where beverages are to be sold). A person who has extended credit to the transferor and residents
4 of counties may protest against the ~~issuance of the license~~ approval of the application. Each protestor
5 is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street
6 address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures
7 of persons opposing the approval of an application may not be considered as a protest. Protests may be
8 mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

9 Dated

Signed

ADMINISTRATOR

12 (2) Each applicant shall, at the time of filing an application, pay to the department an amount
13 sufficient to cover the costs of publishing the notice.

14 (3) (a) If the administrator receives no written protests, the department may ~~issue or transfer the~~
15 license approve the application without holding a public hearing.

16 (b) A response to a notice of opportunity to protest an application may not be considered unless
17 the response is a letter satisfying all the requirements contained in the notice in subsection (1).

18 (c) If the department receives sufficient written protests ~~by a person who has extended credit to~~
19 the transferor or residents of the county from which the application comes or adjoining Montana counties
20 that satisfy the requirements in subsection (1) against the ~~issuance or transfer of the license~~ are received,
21 approval of the application, the department shall hold a public hearing as provided in subsection (4).

22 (4) (a) If the department receives at least one protest but less than the number of protests required
23 for a public convenience and necessity determination as specified in subsection (4)(c), the department shall
24 schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents
25 sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401
26 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and
27 necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

28 (b) If the department receives the number of protests required for a public convenience and
29 necessity determination as specified in subsection (4)(c) and the application is for an original license or for
30 a transfer of location, the department shall schedule a public hearing to be held in the county of the

1 proposed location of the license to determine whether the protest presents sufficient cause to deny the
2 application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial
3 of an application provided for in 16-4-405 including public convenience and necessity. The hearing must
4 be governed by the provisions of Title 2, chapter 4, part 6.

5 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an
6 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for
7 the proposed premises located within a quota area described in 16-4-201 must be equal to 50% 25% OF
8 the quota for all-beverages licenses determined for that quota area according to 16-4-201(1),(2), and (5)
9 but in no case less than two. The minimum number of protests determined in this manner will apply only
10 to applications for either on-premises consumption beer or all-beverages licenses."

11
12 **Section 5.** Section 16-4-402, MCA, is amended to read:

13 **"16-4-402. Application -- investigation.** (1) Prior to the issuance of a license under this chapter,
14 the applicant shall file with the department an application in writing, signed by the applicant and containing
15 information and statements relative to the applicant and the premises where the alcoholic beverage is to
16 be sold as required by the department. The application must be verified by the affidavit of the person
17 making it before a person authorized to administer oaths.

18 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
19 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the
20 department of justice make a thorough investigation of all matters relating to the application. Based on the
21 results of the investigation or on other information, the department shall determine whether:

22 (i) the applicant is qualified to receive a license;
23 (ii) the applicant's premises are suitable for the carrying on of the business; and
24 (iii) the requirements of this code and the rules promulgated by the department are met and
25 complied with.

26 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or
27 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a
28 special permit provided in 16-4-301.

29 (c) For an original license application and an application for transfer of location of a license, the
30 department of justice's investigation and the department's determination under this subsection (2) must

1 be completed within 90 days of the request from the department to the department of justice. If information
2 is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until
3 the requested information is received by the requesting department. The basis for the tolling of the deadline
4 must be documented.

5 (3) Upon proof that an applicant made a false statement in any part of the original application, in
6 any part of an annual renewal application, or in any hearing conducted pursuant to an application, the
7 application for the license may be denied, and if issued, the license may be revoked.

8 (4) ~~If, within 30 days of receiving the completed application, the department finds no basis for~~
9 ~~denying the application, the department shall proceed to publish the notice of the application as required~~
10 ~~by 16-4-207. The department shall issue a conditional approval letter upon the last occurrence of either:~~

11 (a) completion of the investigation and determination provided for in subsection (2) if the
12 department has not received information that would cause the department to deny the application; or

13 (b) a final agency decision that either denies or dismisses a protest against the approval of an
14 application pursuant to 16-4-207.

15 (5) The conditional approval letter must state the reasons upon which the future denial of the
16 application may be based. The reasons for denial of the application after the issuance of the conditional
17 approval letter are as follows:

18 (a) there is false or erroneous information in the application;

19 (b) the premises are not approved by local building, health, or fire officials;

20 (c) there are physical changes to the premises that if known prior to the issuance of the conditional
21 approval letter would have constituted grounds for the denial of the application or denial of the issuance
22 of the conditional approval; or

23 (d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the
24 department's final agency decision provided for in subsection (4)."

25
26 **Section 6.** Section 16-4-404, MCA, is amended to read:

27 **"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license may
28 not be issued until on or after the date set in the notice for hearing protests.

29 (2) Every license issued under this code must state the name of the person to whom it is issued,
30 the location, by street and number or other appropriate specific description of location if no street address

1 exists, of the premises where the business is to be carried on under the license, and other information the
2 department considers necessary. If the licensee is a partnership or if more than one person has an interest
3 in the business operated under the license, the names of all persons in the partnership or interested in the
4 business must appear on the license. Every license must be posted in a conspicuous place on the premises
5 in which the business authorized under the license is conducted, and the license must be exhibited upon
6 request to any authorized representative of the department or the department of justice or to any peace
7 officer of the state of Montana.

8 (3) A license issued under the provisions of this code is a privilege personal to the licensee named
9 in the license and is valid until the expiration of the license unless sooner revoked or suspended.

10 (4) A license may be transferred to the executor or administrator of the estate of a deceased
11 licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under
12 a license. The license may descend or be disposed of with the licensed business under appropriate probate
13 proceedings.

14 (5) (a) A licensee may apply to the department for a transfer of the license to different premises
15 within the quota area if:

16 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

17 (ii) the lease of the licensed premises has expired;

18 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the
19 landlord; or

20 (iv) the licensee has proposed removal of the license to premises that are as substantially suited for
21 the retail alcoholic beverages business as the premises proposed to be vacated.

22 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases
23 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the
24 licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant
25 to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department
26 may not allow a transfer to different premises where the sanitary, health, and service facilities are less
27 satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to
28 be made.

29 (6) Upon a bona fide sale of the business operated under a license, the license may be transferred
30 to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by

the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in 16-4-204 and subsections (2) through (6) and 16-4-204 of this section, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the obligation to pay for the beer or wine."

Section 7. Section 16-4-405, MCA, is amended to read:

"16-4-405. Denial of license. (1) The department may deny the issuance of a retail alcoholic beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) A retail license may not be issued by the department for a premises situated within a zone of a city ~~or~~ town, or county where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) A license under this code may not be issued if the department finds from the evidence at the hearing held pursuant to 16-4-207(3) that:

(a) the welfare of the people residing OR OF RETAIL LICENSEES LOCATED in the vicinity of the premises for which the license is desired will be adversely and seriously affected;

(b) if required, there is not a public convenience and necessity justification pursuant to 16-4-203;

(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria established by this code; ~~or~~

(d) a possible reason for denial listed in a conditional approval letter, as provided in 16-4-402, has been verified; or

(e) the purposes of this code will not be carried out by the issuance of the license."

1 **SECTION 8. SECTION 16-4-501, MCA, IS AMENDED TO READ:**

2 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table
3 wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee
4 as follows:

5 (a) each brewer and each beer importer, wherever located, whose product is sold or offered for
6 sale within the state, \$500; for each storage depot, \$400;

7 (b) each beer wholesaler, \$400; each table wine distributor, \$400; each subwarehouse, \$400;

8 (c) each beer retailer, \$200;

9 (d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer
10 license; for a license to sell table wine at retail for off-premises consumption only, either alone or in
11 conjunction with beer, \$200;

12 (e) any unit of a nationally chartered veterans' organization, \$50.

13 (2) The permit fee under 16-4-301(1) is computed at the rate of ~~\$15~~ \$10 a day for each day beer
14 and table wine are sold at those events lasting 2 or more days, ~~but in no case shall the fee be less than \$30~~
15 may not exceed \$300 for a series of scheduled sporting events.

16 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the
17 sale of all alcoholic beverages.

18 (4) Passenger carrier licenses ~~shall~~ must be issued upon payment by the applicant of an annual
19 license fee in the sum of \$300.

20 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment
21 to a beer-only license pursuant to 16-4-105, is \$200.

22 (6) The annual fee for resort retail all-beverages licenses within a given resort area ~~shall be~~ is
23 \$2,000 for each license.

24 (7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

25 (a) except as provided in this section, for each license outside of incorporated cities and
26 incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000,
27 \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

28 (b) except as provided in this section, for each license in incorporated cities with a population of
29 more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line
30 from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a

1 unit of a nationally chartered veterans' organization and \$500 for all other licensees;

2 (c) except as provided in this section, for each license in incorporated cities with a population of
3 more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line
4 from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a
5 unit of a nationally chartered veterans' organization and \$650 for all other licensees;

6 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance
7 of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to
8 the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800
9 for all other licensees;

10 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated
11 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
12 boundary of the city or town; and where the premises of the applicant to be licensed are situated within
13 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different
14 populations, the license fee chargeable by the larger incorporated city or incorporated town applies and
15 must be paid by the applicant. When the premises of the applicant to be licensed are situated within an
16 incorporated town or incorporated city and any portion of the incorporated town or incorporated city is
17 without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city
18 applies and must be paid by the applicant.

19 (f) an applicant for the issuance of an original license to be located in areas described in subsection
20 (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's
21 ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of
22 \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal
23 of a license issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

24 (8) The fee for one all-beverage license to a public airport is \$800. This license is nontransferable.

25 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under
26 16-4-303 is \$250.

27 (10) The license fees provided in this section are exclusive of and in addition to other license fees
28 chargeable in Montana for the sale of alcoholic beverages.

29 (11) In addition to other license fees, the department of revenue may require a licensee to pay a
30 late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license

1 fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1
2 of the renewal year.

3 (12) All license and permit fees collected under this section must be deposited as provided in
4 16-2-108."

5
6 **NEW SECTION. Section 9. Applicability.** [This act] applies to applications for the issuance or
7 transfer of a license received on or after [the effective date of this act].

8
9 **NEW SECTION. Section 10. Effective date.** [This act] is effective July 1, 1997.

10 -END-